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October 31, 2007

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

ATTN: Hillary DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau

RE: Reply to Opposition to Petition to Intervene as a Party by NASUCA; EB Docket No. 07-197; File No. EB-06-IH-5037

Dear Madame Secretary:

Kurtis J. Kintzel, Keanan Kintzel, and all other Entities by which they do business before the Federal Communications Commission ("the Kintzels, et al."), file this letter to supplement their request, under 47 C.F.R. § 1.41, sent yesterday for filing via express mail (October 30, 2007), for permission to submit an additional pleading to the above-referenced Reply to the Opposition.

This letter provides a brief statement of reasons why the Kintzels, et al., should be permitted to file an additional pleading. In sum, because of the submission of NASUCA's Reply, and the content therein, the pleadings on record now contain an incomplete and distorted view of the attempts to prosecute the Kintzels, et al., in Ohio. For instance, NASUCA's Reply suggests that the Kintzels, et al., were given every opportunity to participate in the Ohio proceeding, but omits facts (e.g., a snowstorm hit Ohio, and the hearing was delayed at the request of the Ohio attorneys; the Kintzels, et al., attempted to participate, but when Kurtis J. Kintzel's daughter was involved in a car accident two days before the rescheduled date, Mr. Kintzel called the ALJ to request a postponement, which the ALJ denied; Mr. Kintzel was also denied the opportunity to participate by conference phone).

An additional pleading would correct the distorted view, depicted in NASUCA's Petition to Intervene and subsequent Reply to the Opposition of the Kintzels, et al., that the Kintzels, et al., had no regard for the proceedings against them in Ohio. On the contrary, it seems that Ohio was in complete disregard of the due process rights of the Kintzels, et al., by denying them the opportunity to present any defense at all in the proceedings. Because of the financial difficulties that Buzz Telecom Corp. was undergoing, they were not able to pay for legal counsel. Because of a series of acts of God (snowstorm, delay of hearing, daughter's car accident), Mr. Kintzel could not attend the hearing in person. The fact that the ALJ in Ohio delayed the hearing at the

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request of the Ohio attorneys, but refused Mr. Kintzel's request to delay the hearing, and further omitted, in the written Opinion and Order, all the facts about the rescheduling and attempts by the defendants to participate, makes the Opinion and Order extremely vulnerable on constitutional grounds.

Nor does NASUCA's Reply address the main issue of the Opposition—that NASUCA does not represent customers who were harmed, and harmed by Buzz. Aside from the arguments already raised in the Opposition on that issue (e.g., a judgment by default, in the absence of an opportunity to defend, is subject to constitutional attack), there is an additional argument—NASUCA is apparently a non-profit or state-sponsored group that is attempting to intervene not only as a party, but as a second prosecutor of sorts, without disclosing any information about where it gets its funding.

The funding sources of most prosecutors are widely known (in the case of the FCC, it is the federal government). Disclosure of funding sources eliminates the possibility of conflicts of interest that could taint the validity of the proceedings. Non-profits may receive funding from corporate sources. It may well be that NASUCA and other "consumer groups" that are involved in attempts to prosecute small businesses may be funded by larger businesses that compete with those small businesses. To permit NASUCA to become a second prosecutor in the instant proceedings without requiring an audit of its funding sources could cause the instant proceedings to become as vulnerable to constitutional attack as the proceedings in Ohio. This additional issue would be argued in the additional pleading, as well.

In addition, as it seems that NASUCA may genuinely believe it represents customers who have been harmed, and harmed by Buzz, despite the fact that none of those customer complaints has ever been cross-examined, and despite the fact that NASUCA has not disclosed whether it receives funding from sources that have replaced Buzz Telecom Corp. as the service provider for those customers, an additional pleading would include facts that were described more fully in the Motion of the Kintzels, et al., to Modify the Issues that was submitted last Friday (October 26, 2007). That Motion describes a series of events that could lead potentially 30,000 customers to complain of slamming caused by Company A, when it was actually caused by the actions of Company B, using the trade name that it had just acquired from Company A in a sale of assets.

Therefore, for all of the foregoing reasons, the Kintzels, et al., submit this supplemental letter to the informal request sent for filing yesterday under 47 C.F.R. § 1.41 for permission to file an additional pleading in the above-referenced matter.

Sincerely,

*Catherine Park, Esq.*

Catherine Park, Esq.

**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing supplemental letter to the informal request under 47 C.F.R. § 1.41 was sent for filing on this 31<sup>st</sup> day of October 2007, by U.S. Mail, Express Mail, to the following:

Marlene H. Dortch  
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Washington, D.C. 20554

And served by U.S. Mail, First Class, on the following:

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